



# **THE ATTORNEY GENERAL OF TEXAS**

**AUSTIN, TEXAS 78711**

**JOHN L. HILL  
ATTORNEY GENERAL**

July 31, 1974

The Honorable Joe Resweber  
County Attorney  
Harris County Courthouse  
Houston, Texas 77002

Letter Advisory No. 81

Re: Dual employment-employees  
of various state agencies/part  
time social workers.

Dear Mr. Resweber:

Your letter states:

The Harris County Hospital District has employed four part-time social service workers to provide crisis intervention assistance to patients and their relatives in the Emergency Center at the District's hospital. The employees work in the evenings and on weekends. Two of the four social workers are regular employees of the Texas Employment Commission. Another works for the County Child Welfare Department and the fourth works for the Mental Health and Mental Retardation Authority of Harris County. The employees are paid for their work.

Some concern about the possibility of prohibited dual office holding has occurred and the Hospital District Administrator asks:

Is part-time employment by the Harris County Hospital District of social service workers who hold regular jobs with certain other State and local governmental agencies prohibited under Texas law?

You have not provided information that would indicate otherwise and we assume for purposes of this opinion that in their regular employments these people occupy civil offices of emolument, but that no common law incompatibility exists between their regular positions and their part-time duties at the hospital. There would appear to be no separation of powers problem because all the agencies you have named are of the executive branch of government. The remaining question is then:

Do the part-time jobs qualify as "civil offices of emolument" which Article 16, Section 40 of the Texas Constitution specifies may not (with certain exceptions) be simultaneously held by a person holding another civil office of emolument?

And because these part-time stations do not fall within any of the Article 16, Section 40 exceptions but are admittedly paid positions "of emolument", the core inquiry is: "Are these part-time positions 'civil offices'?"

In Attorney General Letter Advisory No. 63 (1973) we discussed the distinctions between a "public employment," a "public office" and a "civil office" within the meaning of Section 40. We said:

. . . In our opinion, a "civil office," as used in § 40, is something more than a "public employment" and something less than a "public office" . . . We also believe that a "civil office" is something more than --and is distinct from (though it may include)--a "position of honor, trust or profit."

From the constitutional usages, from the cases, and from past Attorney General opinions, we draw the conclusion that a "public office" exists if a public employment is (1) created by law, (2) with duties cast upon the incumbent which are essentially governmental in nature and involve an exercise of some portion of the sovereign power, (3) in the performance of which the public is concerned, (4) which are continuing and not intermittent or occasional in nature, and (5) which are exercised by him for the benefit of the public,

(6) largely independent of the control of others. A "civil office", within the meaning of Article 16, Sec. 40 of the Constitution, differs from a "public office" in that a "civil office" need not be created by law (although it may be), and its occupant need not be independent of the control of others in the exercise of his duties (although again, he may be).

In other words, excepting military officers, every "public office" is also a "civil office," but not every "civil office" is a "public office."

From your description of the duties of the part-time social service workers at the hospital it appears that theirs are public employments but that those employments do not rise to the status of "public offices" or "civil offices." Their duties do not involve an exercise of any portion of the sovereign power. Unlike the public school teachers and professors considered in Attorney General Opinion H-6 (1973), their official acts, decisions and judgments do not carry with them the authority of the sovereign. They are in advisory positions, not positions of authority. Attorney General Letter Advisory No. 22 (1973).

You explain:

The employees in question are designated as social service workers. They work about twenty hours per week at night or on weekends in the Emergency Center and provide assistance in five basic areas. They: (1) Provide on-the-spot emotional support for patients and their families; (2) Provide special assistance in the areas of housing and transportation; (3) Provide information about the wide range of social assistance available through the various local assistance agencies; (4) Provide crisis intervention for family and patient emotional problems; and (5) Act as a liason for the

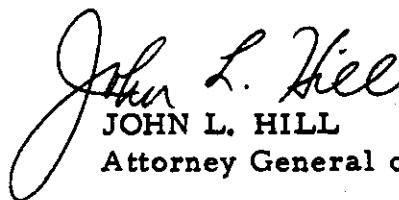
regular social service staff of the Hospital.

Essentially, they offer a helping hand and an initial contact for people in crisis who may later need the services of one or more of the local social assistance agencies . . . .

The part time social workers do not make any significant governmental decisions regarding welfare or other assistance but rather refer the needy to the regular daytime staff. The service is not specifically required by law and is provided for the convenience of the public by the Hospital District.

Other of the requisites for "civil office" may also be absent but we need not discuss them to answer your question. Based upon the information given us, we answer your question in the negative: such part-time employments are not prohibited under the dual employment prohibition Texas law..

Very truly yours,

  
JOHN L. HILL  
Attorney General of Texas

APPROVED:

  
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